

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MICHAEL T. MCRAITH, <i>et al.</i> ,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 07 C 7124
	)	
FRANCES GECKER, not individually	)	Honorable Joan Humphrey Lefkow
but as Chapter 11 Trustee of the estate of	)	Magistrate Judge Arlander Keyes
Automotive Professionals, Inc.,	)	
	)	On Appeal of Honorable Carol A. Doyle
Appellee	)	in Bankruptcy Case No. 07-6720

**DIRECTOR OF INSURANCE’S AGREED MOTION FOR  
CONSOLIDATION AND FOR EXTENSION OF TIME TO FILE BRIEF**

Michael T. McRaith, Director of Insurance of the State of Illinois, in his capacity as statutory and court-affirmed conservator of Automotive Professionals Inc. (the “Director” or “Appellant”), and by his undersigned counsel, hereby moves this Honorable Court, by agreed motion and pursuant to FRCP 42(a), to consolidate the cases numbered 07 C 7124, 07 C 7125, 07 C 7127, 08 C 0799 and 08 C 0800. The Director also moves, by agreed motion and pursuant to Rule of Bankruptcy Procedure 8009, 8011 and FRCP 6(b), for an extension of time within which to file Appellant’s brief in the aforementioned cases. In support thereof, movant states as follows:

**CONSOLIDATION OF APPEALS**

1. Cases numbered 07 C 7124, 07 C 7125 and 07 C 7127 (collectively, the “First Set of Settlement Appeals”), each relate to Notices of Appeal that were filed by the Director in the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”) on

December 28, 2007. Specifically, the First Set of Settlement Appeals relate to certain settlement agreements entered in the Bankruptcy Court by Frances Gecker, not individually, but as Trustee of Automobile Professionals, Inc. (the “Trustee” or “Appellee”).

2. The First Set of Settlement Appeals were previously assigned to the Honorable John F. Grady. However, on February 5, 2008, the Executive Committee ordered that the First Set of Settlement Appeals be assigned to the Honorable Joan Humphry Lefkow as related to case numbered 07 C 3750, pursuant to Local Rule 40.4.<sup>1</sup>

3. Cases numbered 08 C 0799 and 08 C 0800 (collectively, the “Second Set of Settlement Appeals”) each relate to Notices of Appeal that were filed by the Director in the Bankruptcy Court on January 28, 2008. As with the First Set of Settlement Appeals, the Second Set of Settlement Appeals also relate to settlement agreements entered in the Bankruptcy Court by the Trustee.

4. The Second Set of Settlement Appeals have been assigned to Judge Grady. However, on February 15, 2008, the Trustee filed with the Court an Agreed Motion for Reassignment, requesting that the Second Set of Settlement Appeals be assigned to Judge Lefkow as related to the First Set of Settlement Appeals, pursuant to Local Rule 40.4. As of the date of this filing, this Court had not yet ruled on the Agreed Motion for Reassignment.

5. The Director respectfully requests that the Second Set of Settlement Appeals be consolidated with the First Set of Settlement Appeals, pursuant to FRCP 42(a).

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<sup>1</sup> Case Nos. 07 C 3750 and 07 C 4152 (the “Initial Appeals”) were the first two appeals brought by the Director from the Bankruptcy Court, and were assigned to Judge Lefkow. The Initial Appeals sought leave to appeal certain other orders entered in the Bankruptcy Court. This motion does not seek the consolidation of any cases with the Initial Appeals, but only consolidation of those appeals having to do with the settlement agreements discussed herein.

6. FRCP 42(a) provides that “[w]hen actions involving a common question of law or fact are pending before the court . . . it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

7. The First Set of Settlement Appeals and Second Set of Settlement Appeals all involve a number of the same legal issues and facts, as evidenced by the Agreed Motion for Reassignment, filed by the Trustee on February 15, 2008. In addition, consolidation of the First Set of Settlement Appeals and the Second Set of Settlement Appeals would “avoid unnecessary costs or delay” under FRCP 42(a) because it would reduce substantially the amount of briefing required by the Director and the Trustee. That is, the Director and the Trustee would each only file one (1) brief in support of or in opposition to the First and Second Set of Appeals, rather than five (5). Also, the Director requests that the records on appeal for the First and Second Set of Appeals be consolidated, thereby avoiding additional unnecessary costs and delay relating to the managing of and citation to five (5) separate records.

8. The Trustee agrees with the consolidation of the Second Set of Settlement Appeals with the First Set of Settlement Appeals.

#### **EXTENSION OF TIME**

9. The Appellant’s brief in support of the First Set of Settlement Appeals is due on February 20, 2008, and the Appellee’s brief is due on March 19, 2008. The deadline for Appellant’s brief in support of the First Set of Settlement Appeals has been extended by two previous motion to extend, one of which has been an agreed motion to extend.

10. The Appellant’s brief in support of the Second Set of Settlement Appeals is currently due on February 22, 2008, and the Appellee’s brief is currently due on March 10, 2008.

11. Counsel for the Director and counsel the Trustee have been actively engaged in settlement negotiations that the Director in good faith believes could result in the voluntary dismissal of the First Set of Set of Settlement Appeals, the Second Set of Settlement Appeals, and the Initial Appeals.

12. The Director attaches as Exhibit A to this Agreed Motion an affidavit from the Assistant Attorney General responsible for the preparation and filing of the Appellant's brief, Carl J. Elitz, which attests to his ongoing discussions with Counsel for the Trustee.

13. The Director requests an approximately 30-day extension to the deadline for Appellant to file his Appellant's brief in the First and Second Set of Settlement Appeals (or until March 21, 2008), and a likewise 30-day extension to the deadline for Appellee to file her Appellee's brief in the First and Second Set of Settlement Appeals (or until April 21, 2008).

14. Counsel for the Trustee has indicated that the Trustee does not oppose this request to so extend the briefing schedule.

15. This request is not made for the purposes of delay but for the allowance of a finite period of time during which the parties can negotiate the terms of a possible settlement agreement that would result in the voluntary dismissal of the First and Second Set of Settlement Appeals, and the Initial Appeals.

16. The Director does not believe unfair prejudice would result by a short extension of the brief due dates in this matter.

17. The attached affidavit is not presented for purposes of delay.

**WHEREFORE**, Michael T. McRaith, Director of Insurance of the State of Illinois, moves this Honorable Court for an order: (A) consolidating cases numbered 07 C 7125, 07 C 7127, 08 C 0799 and 08 C 800 with case numbered 07 C 7124; (B) consolidating the records on appeal of cases numbered 07 C 7125, 07 C 7127, 08 C 0799 and 08 C 800 with the record on appeal of case numbered 07 C 7124; (C) granting an approximately 30-day extension of time within which to file the Appellant's brief (or until March 21, 2008) and a likewise approximately 30-day extension for the Appellee to file her Appellee's brief (or until April 21, 2008) in the consolidated case; and (D) for other relief that the Court deems equitable and just.

Dated: February 20, 2008

Respectfully submitted,

MICHAEL T. MCRAITH,  
DIRECTOR OF INSURANCE IN THE STATE  
OF ILLINOIS

By: LISA MADIGAN  
Attorney General  
State of Illinois

By: /s/Allan V. Abinoja  
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**CERTIFICATE OF SERVICE**

I, Allan V. Abinoja, an attorney, certifies that on February 20, 2008, a true and correct copy of the Director of Insurance's Agreed Motion to Consolidate and for Extension of Time to File Brief was filed electronically. Notice of the filing will be sent to all parties who are currently on the Court's Electronic Mail Notice List by operation of the Court's Electronic Filing System.

/s/Allan V. Abinoja